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**From:**

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**Subject:** RE:

There are a number of cases you can look at that treat abandonment as an identifiable event establishing worthlessness. For example ...

Proesel v. Commissioner, 77 T.C. 992, 1005 (1981):

**The final question to be considered is whether the right of Benwest to receive payment from Gavilan became worthless in 1972.** Generally, section 165 allows a deduction for a loss sustained during the taxable year and not compensated for by insurance or otherwise. To be allowable, a loss must be evidenced by closed and completed transactions which are fixed by identifiable events and actually sustained during the taxable year. Sec. 1.165-1(b) and (d), Income Tax Regs. **Such events include a sale, an abandonment, or other acts or events which reflect the fact that the property is worthless.** Secs. 1.165-1(d), 1.165-2(a), Income Tax Regs.; *Gordon v. Commissioner*, [\*1006] 46 B.T.A. 1201, 1210 (1942), affd. sub nom. *Helvering v. Gordon*, 134 F.2d 685 (4th Cir. 1943).

Echols v. United States, 950 F.2d 209, 211-214 (5th Cir. 1991):

Additionally, **the abandonment in Rhodes was only one of several factors the court considered in searching for an identifiable event establishing worthlessness.** Rhodes stands for the proposition that abandonment is not the exclusive way to establish worthlessness of an asset the title to which remains vested in the taxpayer.

\* \* \*

In *Denman v. Brumback*, relied on by the Commissioner, **the taxpayer confirmed his subjective determination of worthlessness by abandoning real estate and writing it off. Those were overt and objective affirmations by the taxpayer of the subjective determination of worthlessness.**

\* \* \*

The *Proesel* court clearly based its holding on an analysis of the value or absence of value of the asset, supporting the conclusion that a taxpayer **is not necessarily required to abandon an asset in order to take a loss deduction based on worthlessness.**

\* \* \*

*Rhodes* and *Proesel* establish that, although **an act of abandonment by the taxpayer may be one of several factors in the analysis of whether the taxpayer's subjective determination of an asset's worthlessness is sustainable**, abandonment is not an indispensable requirement for a worthlessness deduction under Code § 165.

McCarthy v. United States, 129 F.2d 84, 86 (7th Cir. 1942)

Burke v. Commissioner, 32 T.C. 775, 780-81 (1959)

Laport v. Commissioner, 671 F.2d 1028, 1032 (7th Cir. 1982)

Helvering v. Gordon, 134 F.2d 685, 689 (4th Cir. 1943)

Hummel v. United States, 227 F. Supp. 30, 3233 (D. Cal. 1963)

Haspel v. Commissioner, 62 T.C. 59, 71 (T.C., 1974)

Louisville & Nashville RR. Co. v. Commissioner, 66 T.C. 962, 1004-10 (T.C. 1976)

Jupiter Corp. v. United States, 2 Cl. Ct. 58, 71 (Ct. Cl. 1983).

If the taxpayer thought the stock was not worthless, then it must have made some sort of gift or capital contribution; it wouldn't have a loss.